

# Medicaid Citizenship Documentation

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## Summary

Since 1986, the Immigration Reform and Control Act (P.L. 99-603) has mandated Medicaid to have applicants declare under penalty of perjury that they are citizens or nationals of the United States (or that they are aliens in a satisfactory immigration status). Subsequently, §432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) stated that the Secretary of Health and Human Services must establish procedures for persons applying for federal public benefits to “provide proof of citizenship in a fair and nondiscriminatory manner.” States could accept self-declaration of citizenship for Medicaid, although some chose to require additional supporting evidence.

The Deficit Reduction Act of 2005 (P.L. 109-171), as amended by the Tax Relief and Health Care Act of 2006 (P.L. 109-432) enacted §1903(x) of the Social Security Act, which requires states to obtain satisfactory documentation of citizenship to determine eligibility for Medicaid. There are 4 documents that meet the statutory requirements: a U.S. Passport, a Certificate of Naturalization, a Certificate of United States Citizenship, or a state-issued drivers license or other identity document for which the state has verified the citizenship of the holder. Additional documents that can be used in tandem to meet the citizenship requirements include birth certificates and other documents the Secretary of Health and Human Services designates by regulation.

One of the first pieces of legislation taken up by the 111<sup>th</sup> Congress—H.R. 2 and S. 275, the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA 2009)—contains a provision, § 211, that would give states an alternative to the documents required to establish U.S. citizenship for Medicaid. Under the §211 data matching option, the name and social security number (SSN) of an applicant could be submitted to the Commissioner of Social Security Administration (SSA). The Commissioner would check the information received from the states against the SSA database and determine whether the name and SSN match and whether the SSA database shows that the applicant is a citizen. If the SSA cannot confirm the applicant’s name, SSN and citizenship, the applicant would have to either resolve the inconsistency or provide satisfactory documentary evidence of citizenship as defined in § 1903(x)(3), or else be disenrolled. Section 211(c) of CHIPRA 2009 would provide that the Medicaid citizenship documentation requirements currently required under Section 1903(x), and as amended by the provisions of §211 of CHIPRA 2009, would apply to the State Children’s Health Insurance Program (SCHIP), Title XXI of the Social Security Act.

On February 4, 2009, President Barack Obama signed CHIPRA 2009, which includes §211, into law as P.L. 111-3.

This report will be updated to reflect legislative activity.

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# Overview of Citizenship Documentation

To be eligible for the full range of benefits offered under Medicaid, an individual must be a citizen or national<sup>1</sup> of the United States (or a qualified alien).<sup>2</sup> Regardless of citizenship status, individuals must meet all other eligibility requirements to qualify for the program.

## Citizenship Documents Generally

The United States does not require its citizens to have legal documents that verify their citizenship. In addition, possession of a social security number (SSN) is not a condition of U.S. citizenship.<sup>3</sup> Although some assert that the United States has *de facto* identification cards in the form of social security cards and drivers' licenses or state identification cards, none of these documents currently establishes citizenship. The U.S. passport is one of the few documents that certifies that the individual is a U.S. citizen; indeed, for most U.S. citizens it is the only document they possess that verifies both their citizenship and identity. For many years, self-attestation of citizenship was generally accepted for most government purposes. Government-issued certificates of birth, naturalization and citizenship are the main documents provided to verify U.S. citizenship.

False claims of citizenship have long been an illicit avenue for benefit fraud and, as a result, are considered a crime. In general, §1015 of the United States Criminal Code criminalizes acts of fraud relating to naturalization, citizenship, or alien registry. Specifically, it is a criminal offense for a person to knowingly make “any false statement or claim that he is, or at any time has been, a citizen or national of the United States, with the intent to obtain on behalf of himself, or any other person, any federal or state benefit or service, or to engage unlawfully in employment in the United States.”<sup>4</sup> Congress enacted in recent years several specific laws aimed directly at fraud issues pertaining to citizenship self-attestation and identity document integrity. For example, the REAL ID Act (P.L. 109-13, Division B) contains provisions to enhance the security of state-issued drivers' licenses and personal identification (ID) cards. If state-issued drivers' licenses and ID cards are to be accepted for federal purposes, the Act requires states to establish minimum issuance standards and adopt certain procedures to verify documents used to obtain drivers' licenses and ID cards.<sup>5</sup>

The use of the social security card for personal identification has been discouraged for many years. The Social Security Administration (SSA) has emphasized that the social security number identifies a particular record only and the social security card indicates the person whose record is identified by that number. Thus, the social security card was not meant to identify the bearer.

<sup>1</sup> Throughout this report, references to citizens also include nationals.

<sup>2</sup> The term qualified alien was created by P.L. 104-193. Examples include legal permanent residents (LPRs), refugees, and asylees. LPRs entering after August 22, 1996, are barred from receiving full Medicaid benefits for five years, after which coverage becomes a state option. CRS Report R40144, *State Medicaid and SCHIP Coverage of Noncitizens*, by Ruth Ellen Wasem.

<sup>3</sup> Each person decides when he or she needs an SSN based on federal and state statutes requiring disclosure of an SSN. Thus, regulations issued by the Social Security Administration regarding obtaining a SSN state that “(a)n individual needing a social security number may apply for one by filing a signed form SS-5, ‘Application for a Social Security Number Card.’” 20 C.F.R. Section 422.103(b)(1).

<sup>4</sup> 18 U.S.C. § 1015. For further legal analysis, see CRS Report RL32657, *Immigration-Related Document Fraud: Overview of Civil, Criminal, and Immigration Consequences*, by Yule Kim and Michael John Garcia.

<sup>5</sup> CRS Report RL34430, *The REAL ID Act of 2005: Legal, Regulatory, and Implementation Issues*, by Todd B. Tatelman.

From 1946 to 1972, the legend “NOT FOR IDENTIFICATION” was printed on the face of the card as a warning that no proof of identity was required to get a social security card.<sup>6</sup>

The Social Security Amendments of 1972 (P.L. 92-603) required the SSA to obtain evidence to establish age, citizenship, or alien status, and identity of the applicant for a social security card/number. As of November 2008, the SSA requires applicants to present for identification a document that shows name, identifying information and preferably a recent photograph.<sup>7</sup> The SSA also requires that all documents be either originals or copies certified by the issuing agency.<sup>8</sup>

## Emergence of Documentary Requirements for Medicaid Eligibility

Since 1986, the Immigration Reform and Control Act (P.L. 99-603) has mandated Medicaid to have applicants declare under penalty of perjury that they are citizens or nationals of the United States (or that they are aliens in a satisfactory immigrant status).<sup>9</sup> Subsequently §432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) stated that the Secretary of Health and Human Services must establish procedures for persons applying for federal public benefits to “provide proof of citizenship in a fair and nondiscriminatory manner.”<sup>10</sup> States could accept self-declaration of citizenship for Medicaid, although some chose to require additional supporting evidence.<sup>11</sup>

Since 2006, individuals who declare that they *are* citizens also must present documentation that proves citizenship. This Medicaid citizenship documentation requirement was required by § 6036 of the Deficit Reduction Act of 2005 (DRA) (P.L. 109-171) and modified by the Tax Relief and Health Care Act of 2006 (P.L. 109-432). It applies to Medicaid eligibility determinations and redeterminations made on or after July 1, 2006. This requirement, found in §1903(x) of the Social Security Act (SSA), lists 4 documents that meet the statutory requirements: a U.S. Passport, a Certificate of Naturalization, a Certificate of United States Citizenship, or a state-issued driver’s license or other identity document for which the state has verified the citizenship of the holder.<sup>12</sup> The Secretary may by regulation specify other documents, in addition to the four principal documents, so long as the documents provide both proof of U.S. citizenship and provide a reliable means of documentation of personal identity.<sup>13</sup> Additional documents that can be used in tandem to meet the citizenship requirement include birth certificates and other documents the Secretary of Health and Human Services designates by regulation.<sup>14</sup> The law also exempts certain groups from the requirement, including people who receive Medicare benefits, Social Security benefits on the

<sup>6</sup> For a discussion and legal analysis of the SSN, see CRS Report RL30318, *The Social Security Number: Legal Developments Affecting Its Collection, Disclosure, and Confidentiality*, by Kathleen S. Swendiman.

<sup>7</sup> Implementing § 7213 of the Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108-458.

<sup>8</sup> Social Security Administration, *New Rules for Getting a Social Security Number and Card*, SSA Publication No. 05-10120, November 2008.

<sup>9</sup> §1137 of the Social Security Act as amended by P.L. 99-603 and P.L. 104-193.

<sup>10</sup> 8 U.S.C. 1642.

<sup>11</sup> U.S. Department of Health and Human Services, Office of Inspector General, *Self-Declaration of U.S. Citizenship for Medicaid*, OEI-02-03-00190, July 2005.

<sup>12</sup> §6036 of the Deficit Reduction Act of 2005 (P.L. 109-171), as amended by the Tax Relief and Health Care Act of 2006 (P.L. 109-432).

<sup>13</sup> § 1903(x)(3)(B)(v).

<sup>14</sup> § 1903(x)(3). U.S. Department of Health and Human Services, “Medicaid Program; Citizenship Documentation Requirements; Final rule,” 72 *Federal Register* 38662-38697, July 13, 2007.

basis of a disability, Supplemental Security Income benefits, or child welfare, adoption, or foster care assistance under Title IV-B or Title IV-E of the Social Security Act.

The citizenship documentation requirement in §1903(x) of the Social Security Act does not specifically apply to the State Children’s Health Insurance Program (SCHIP). However, some states use the same enrollment procedures for all Medicaid and SCHIP applicants. As a result, some SCHIP enrollees might be required to present evidence of citizenship.

## Regulations Implementing §1903(x) of the Social Security Act

The publication of interim and final rules implementing the Medicaid citizenship documentation requirement of §1903(x) of the Social Security Act received considerable media and interest group attention. On July 12, 2006, the Centers for Medicare and Medicaid Services (CMS) issued interim final regulations on how states were required to implement §1903(x).<sup>15</sup> Stakeholders were invited to submit comments in response to the agency’s interim regulations. One year later, on July 13, 2007, CMS issued the final regulations.<sup>16</sup> According to CMS, the changes in the final 2007 rule responded to over 1,400 public comments on the interim final rule as well as changes enacted as part of the Tax Relief and Health Care Act of 2006 (P.L. 109-432).

The final rule provides guidance to states on the types of documentary evidence that may be accepted as satisfactory evidence of a Medicaid applicant’s citizenship, on the hierarchy of various documents, and on the conditions under which citizenship evidence may be accepted. The final rule states that individuals must generally provide original documents or a certified copy issued by the relevant agency to establish proof of citizenship. In addition to the primary documents listed in the statute (a U.S. Passport, a Certificate of Naturalization, a Certificate of United States Citizenship, or a state-issued driver’s license or other identity document for which the state has verified the citizenship of the holder), the final rule also permits certain other documents, such as a certified report of birth abroad to a U.S. citizen, a U.S. Citizen I.D. card, an adoption decree showing a child’s name and place of birth, evidence of civil service employment before 1976, and a military record showing place of birth to be submitted as evidence of citizenship. Depending on the type of citizenship document provided, however, the final rule provides that individuals may be required to present additional documents confirming their identity, such as a birth certificate accompanied by a driver’s license.

States are permitted to use data from other programs and governmental or law enforcement agencies to certify an individual’s identity. The regulation provides special identity rules for children under age 16 as long as the documents were created near the time of birth. The final rule clarifies that certain documents such as “souvenir birth certificates” issued at the hospital are unacceptable. Special rules are set forth for elderly individuals and other populations who may need additional assistance in obtaining documentation. The final rule also clarifies that children born to women on Medicaid (including emergency Medicaid) are automatically eligible for Medicaid coverage for one year; however, citizenship must be documented when the child’s eligibility for Medicaid is redetermined after one year.

<sup>15</sup> Centers for Medicare and Medicaid, “Medicaid Program; Citizenship Documentation Requirements; Interim Final Rule with Comment Period,” 71 *Federal Register* 39214-39229, July 12, 2006.

<sup>16</sup> Centers for Medicare and Medicaid Services, “Medicaid Program; Citizenship Documentation Requirements; Final Rule,” 72 *Federal Register* 38661-38697, July 13, 2007.

## State Implementation

Although the citizenship documentation requirement took effect on July 1, 2006, some states delayed implementation, citing reasons such as the need to train eligibility staff and adequately notify beneficiaries. Despite the possibility that federal Medicaid funds could have been withheld from states during periods when they were not in compliance with the law, a CMS spokeswoman said it was unclear whether there was “zeal” to do so.<sup>17</sup>

Based on a 2007 survey by the U.S. Government Accountability Office (GAO), 22 of 44 states have reported declines in enrollment due to the new citizenship documentation requirement.<sup>18</sup> Based on another survey by the Kaiser Commission on Medicaid and the Uninsured, 13 states report a significant negative impact on enrollment and another 24 states report a modest impact.<sup>19</sup> Among seven states detailed in an earlier report from the Center on Budget and Policy Priorities,<sup>20</sup> only Wisconsin had a data system that can identify denials and terminations due to a lack of citizenship documentation, and it reports that about 19,000 people had their Medicaid eligibility denied or terminated for this reason between July 31, 2006, and March 1, 2007.

Even if most or all of the reported Medicaid enrollment declines are due to the citizenship documentation requirement, a key question is whether the people who are being denied, terminated, or deterred from applying are U.S. citizens, rather than unauthorized aliens or other ineligible noncitizens. Of the 22 states reporting enrollment declines to GAO, a majority (16 states) attributed them to Medicaid coverage delays in or losses of Medicaid coverage for individuals who appeared to be U.S. citizens. The extent to which the citizenship requirement is deterring ineligible noncitizens from applying for Medicaid is unknown.<sup>21</sup>

Administrative costs are also an issue. According to both GAO and Kaiser, most states report that they are spending more time completing applications and redeterminations. GAO reports that 27 states appropriated or budgeted funds in state fiscal year (SFY) 2007 or 2008 to implement the citizenship documentation requirement.<sup>22</sup> Kaiser reports that 19 states indicated a significant increase in administrative costs, and that another 26 states indicated a modest increase.<sup>23</sup> A recent report from The Commonwealth Fund concluded: “The new requirements increased the complexity, administrative burden, and costs of enrollment and renewal in each state, and in some cases the rules even compromised other processes.”<sup>24</sup> States will receive federal reimbursement for these costs using the 50% rate that applies to most Medicaid administrative functions. Since existing enrollees must present documentation at their next eligibility redetermination (a process that generally occurs at least once a year), administrative costs should peak in the year following

<sup>17</sup> See Clea Benson, “Medi-Cal ID Rules Readied,” *The Sacramento Bee*, February 25, 2007.

<sup>18</sup> GAO, *States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens*, GAO-07-889, June 2007, hereinafter *States Reported*.

<sup>19</sup> Vernon Smith et al., *As Tough Times Wane, States Act to Improve Medicaid Coverage and Quality: Results from a 50-State Medicaid Budget Survey for State Fiscal Years 2007 and 2008*, Kaiser Commission on Medicaid and the Uninsured, October 2007, hereinafter *Kaiser survey*.

<sup>20</sup> Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement Is Taking a Toll*, Center on Budget and Policy Priorities, revised March 13, 2007.

<sup>21</sup> See discussion of this issue in GAO, *States Reported*, pp. 27-28.

<sup>22</sup> For 10 states reporting appropriated funds in SFY2007, the amount represented from 1% to 12% of each state’s 2005 Medicaid administrative expenditures. *Ibid.*, p. 20.

<sup>23</sup> See *Kaiser survey*.

<sup>24</sup> Laura Summer, *Getting and Keeping Coverage: States’ Experience with Citizenship Documentation Rules*, The Commonwealth Fund, January 2009.



implementation of the requirement. Costs in later years should be lower, reflecting the ongoing expense of documenting those who are new to the program.

## Legislative Activity in 111<sup>th</sup> Congress

One of the first pieces of legislation taken up by the 111<sup>th</sup> Congress—H.R. 2, the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA 2009)—contains an alternative option to the current documentary requirements of § 1903(x) of the SSA to establish citizenship for Medicaid eligibility. The House passed H.R. 2 on January 14, 2009.<sup>25</sup> The related Senate bill, S. 275 also contains an alternative option to the current citizenship documentation requirements. When the Senate took up CHIPRA, S. 275 became the substitute language for H.R. 2, and it passed the Senate on January 29, 2009. On February 4, 2009, the House agreed to the Senate version of H.R. 2, and President Barack Obama signed CHIPRA 2009 into law as P.L. 111-3.

### Summary of §211 of CHIPRA 2009 (P.L. 111-3)

Section 211 of CHIPRA 2009 (enacted as P.L. 111-3) permits states to elect an alternative process for verifying citizenship as required by §1903(x) of the SSA. Under the §211 option, the name and SSN of an applicant could be submitted to the Commissioner of SSA. The Commissioner would check the information received from the states against the SSA database and determine whether the name and SSN match and whether the SSA database shows that the applicant is a citizen. If the SSA cannot confirm the applicant’s name, SSN and citizenship, the applicant would have to either resolve the inconsistency or provide satisfactory documentary evidence of citizenship as defined in §1903(x)(3), or else be disenrolled. Thus, the SSA data matching option could, if enacted, substitute for the presentation of required citizenship documents under current law. Section 211(c) of CHIPRA 2009 would provide that the Medicaid citizenship documentation requirements currently required under Section 1903(x), and as amended by the provisions of §211 of CHIPRA 2009, would apply to SCHIP, Title XXI of the Social Security Act. How §211 of CHIPRA 2009 will be implemented will unfold in the coming months

## Citizenship Documentation Issues

The proposed alternative option in § 211 of H.R. 2 and S. 275 for verifying citizenship of Medicaid applicants through a SSA database matching process is sparking considerable debate. Proponents of this option point out the difficulty that some U.S. citizens have had in gathering the required citizenship documents under current law and maintain it is a barrier to the receipt of needed health services.<sup>26</sup> They argue as well that it is a burden for states to administer the DRA

<sup>25</sup> For a complete analysis and summary of this legislation, see CRS Report R40130, *The Children’s Health Insurance Program Reauthorization Act of 2009*, by Evelyne P. Baumrucker et al..

<sup>26</sup> When the U.S. Government Accountability Office (GAO) evaluated the new requirement in 2007, it found only limited information about the extent to which the requirement deterred aliens who were not qualified from applying for Medicaid. These findings were consistent with the 2005 U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) report on state self-attestation policies, which did not find problems regarding false allegations of citizenship. Rather, the GAO found evidence of inadvertent denials of persons who appeared to be U.S. citizens. “Twenty-two of the 44 states reported declines in Medicaid enrollment due to the requirement, and a majority of these states attributed the declines to delays in or losses of Medicaid coverage for individuals who appeared to be eligible citizens.” U.S. Government Accountability Office, *States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens*, GAO-07-889, June 2007.



citizenship documentation provision. They maintain that the SSN data matching option would be an efficient and effective alternative because SSA would be looking at whether the declaration of citizenship is consistent with information in SSA's records, such as place of birth, and that SSA would be able to distinguish citizens from noncitizens.<sup>27</sup>

Supporters of current law maintain that current law curbs fraud and identity theft by requiring citizens to present specific documents that establish their U.S. citizenship in order to reduce false claims of citizenship. They allege that aliens who entered illegally or overstayed their temporary visas might have easier access to Medicaid and SCHIP as a result of the proposed use of SSNs to document citizenship.<sup>28</sup> Some assert that current law on documentation and verification should be strengthened and that the alternative option of SSN database matching for citizenship would weaken enforcement and increase fraud.

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<sup>27</sup> The SSN alternative has some similarities with the E-Verify (formerly, the Employment Eligibility Verification System), which electronically verifies new hires' employment authorization by running their SSN through SSA databases and, if necessary, the Department of Homeland Security (DHS) databases. However, E-Verify is an Internet based system operated by the DHS in partnership with SSA.

<sup>28</sup> Some unauthorized aliens have legally obtained SSNs. For example, temporary foreign workers and asylum seekers may legally obtain SSNs because they are authorized to work in the United States, but they may ultimately become unauthorized aliens if they violate the terms of their visas or are denied asylum. Presumably, the SSA databases are able to distinguish these aliens from citizens.